RECENT IMPORTANT DECISIONS

ATTORNEY AND CLIENT—CONTRACTS RESTRICTING SETTLEMENT BY CLIENT.—A contingent fee agreement made by an attorney with his client provided that the attorney should have a lien for his services on the amount received by reason of the claim, and also that neither party should compromise the claim without the consent of the other. The plaintiff brought suit for the amount of his services against the defendants in the prior suit, who admitted receiving notice of the above agreement. *Held,* an agreement prohibiting a client from settling a case without the attorney's consent is void as against public policy and third parties sought to be held liable for compensation of client's attorney may avail themselves of its invalidity, *Nichols* v *Waters,* (Mich., 1918), 167 N. W. 1.

This question has never been passed on before in Michigan. But the view of the court is in accordance with the weight of authority and reason. Public policy forbids that an attorney at law should so arrange for an interest in the subject matter of litigation as to preclude the client from compromising the cause with the adverse party without the attorney's consent. *Davis* v. *Webber,* 66 Ark. 190. (For collection of authorities, see *Thornton on Attorney at Law,* 754.) The whole contract is affected by the invalidity of a stipulation restricting the client's privilege to settle. *Davis* v. *Webber* (*supra*). Third parties may avail themselves of its invalidity. *Davis* v. *Fid. & Cas. Ins. Co.,* 78 Ohio St., 256; *Ingersoll* v. *Coal Creek Coal Co.,* 117 Tenn. 263. But such stipulation may be held valid. *Lipscomb* v. *Adams,* 193 Mo. 530; *Hoffman* v. *Vallejo,* 45 Cal. 564; *Ft. Worth, etc., Ry. Co. v. Carlock,* 33 Tex. Civ. A. pp. 202. For a discussion of the Missouri case, see 7 MICH. L. REV. 679.

BANKRUPTCY—DISCHARGE—TRANSFER NO BAR TO DISCHARGE.—While the bankrupt was of doubtful solvency and was losing money on a number of stores owned by him, he organized a corporation of which he took all the stock except a few shares held by his wife and his bookkeeper. His profitable stores he transferred to this corporation with the avowed intention of breaking his leases on the unprofitable stores. He hypothecated about three-fourths of the stock to obtain new money from new creditors. *Held* that, in the absence of "fraudulent intent," discharge would not be denied. *In re Braus.* (C. C. A. —, 1917), 248 Fed. 55.

§ 14b (4) of the BANKRUPTCY ACT denies a discharge if the bankrupt has "transferred, removed, destroyed, or concealed * * * * any of his property with intent to hinder, delay, or defraud his creditors." The District Court (237 Fed. 139) recognized a division in the authorities, but *held* with those which presume a fraudulent intent when the necessary effect of the transfer is to hinder, delay, or defraud creditors. See 15 MICH. L. REV. 436. *Dean* v. *Davis,* 242 U. S. 438, although the question there came up under § 67e of the BANKRUPTCY ACT, seems to support the District

Court. § 67e, which makes void as to creditors certain transfers made with intent to hinder, delay, or defraud creditors, was there *held* to apply even in the absence of an actual intent if the "obviously necessary effect" of the transfer was to hinder, delay, or defraud. The Supreme Court, moreover, seems to favor a similar interpretation of the same words as used in § 3 (1) of the BANKRUPTCY ACT, inasmuch as it expressly disapproved of *Githens* v. *Shiffer,* 112 Fed. 505, which had required a specific intent to hinder, delay, or defraud to be shown before a transfer of property could be considered an act of bankruptcy even though the result accomplished was to hinder, delay, or defraud creditors. The stricter construction given to the words in § 14b (4) of the BANKRUPTCY ACT by the instant case can be reconciled with *Dean* v. *Davis supra,* only on account of the somewhat penal character of that section. BLACK, BANKR. § 670; REMINGTON, BANKR. (2nd) § 2467.

BANKRUPTCY—FRAUDULENT TRANSFER OF PROPERTY BARRING DISCHARGE.—Bankrupt formed the defendant corporation with himself, his wife, his infant son, and his attorney, as incorporators, for the admitted purpose of withdrawing his property from the reach of his creditors. By an order of the referee in a summary proceeding, the trustees in bankruptcy were able to seize personalty which the bankrupt had, in pursuance of his plan, placed ostensibly in the possession of the corporation. The creditors of the bankrupt objected to his discharge in bankruptcy on the ground that he had transferred property with intent to defraud creditors. *Held,* that, inasmuch as there was no transfer, a discharge would not be denied. *W. A. Liller Bldg. Co.* v. *Reynolds* (C. C. A. 4th Circ., 1917), 247 Fed. 90.

If the property of a bankrupt is held by a third person without any adverse claim or with merely a colorable claim, the trustee may by summary process reduce it to possession. *Bryan* v. *Bernheimer,* 181 U. S. 188; *Mueller* v. *Nugent,* 184 U. S. 1; Babbitt 1. Dutcher, 216 U. S. 102; *In re Muncie Pulp Co.,* 139 Fed. 546; *In re Franklin Suit & Skirt Co.,* 197 Fed. 591; BRANDENBURG, BANKR. § 1168. A desire to expedite proceedings by means of this summary jurisdiction has perhaps led the courts to regard property which a bankrupt has ostensibly transferred to his wife with the intent to defraud his creditors as still the bankrupt's property. *In re Smith,* 100 Fed. 795; *In re Friedman,* 153 Fed. 939; *In re Eddleman,* 154 Fed. 160; *Shea* v. *Lewis,* 206 Fed. 877; COLLIER, BANKR. (11th ed.), 686, 1075; REMINGTON BANKR. § 1822. And since a corporation formed to defraud creditors is considered a nullity, an attempted transfer of property to it for that purpose leaves the property still in the possession of the bankrupt, so that the trustee may summarily seize it. *In re Berkowitz,* 22 A. B. R. 227, 173 Fed. 1013; *In re Rieger,* &c., 157 Fed. 609. Moreover, the bankrupt must schedule among his assets property thus fraudulently transferred. *In re Welch,* 100 Fed. 65; *In re Pierce,* Fed. Cas. No. 11, 141; *In re O'Bannon,* Fed. Cas. No. 10,394; COLLIER, BANKR. (11th ed.), 262. *Contra, In re Robertson,* Fed. Cas. No. 11,921. These authorities give some excuse for the decision in the principal case. Certainly if there be no "transfer," a dis-